

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF:)
)
M. POLLAK,) OTA NO. 230312788
)
)
) APPELLANT.)
)
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_____)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, August 20, 2024

Reported by:

Aaron Ellington
CSR# 13449

Job No.:
501300TA(AM)

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APPEARANCES :

Panel Lead: ALJ JOSHUA ALDRICH

Panel Members: ALJ KEITH LONG
HEARING OFFICER KIMBERLY WILSON

For the Appellant: M. POLLAK

For the Respondent: CALIFORNIA DEPARTMENT OF TAX AND
FEE ADMINISTRATION

AMANDA JACOBS
CARY HUXSOLL
JASON PARKER

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I N D E X

E X H I B I T S

(Department's Exhibits were received into evidence via Judge Aldrich's minutes and orders)

| APPELLANT'S EXHIBITS | | ID. | EVID. |
|----------------------|------------------------|-----|-------|
| Appellant's 1 | Hand-written document | 7 | 11 |
| Appellant's 2 | Document | 7 | 11 |
| Appellant's 3 | Statement of facts | 8 | 11 |
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1 Sacramento, California; Tuesday, August 20, 2024

2 9:36 a.m.

3 JUDGE ALDRICH: This is Judge Aldrich. We're opening
4 the record in the appeal of M. Pollak, before the Office of
5 Tax Appeals, OTA Case Number 230312788. Today's date is
6 Tuesday, August 20th, 2024, and it is approximately 9:36 a.m.
7 This hearing is being conducted in Sacramento, California, and
8 it is also being live-streamed on the OTA's YouTube channel.

9 This hearing is being heard by a panel comprised of
10 myself, Judge Aldrich. I'm the lead judge for purposes of
11 conducting the hearing. I'm joined by Judge Keith Long, and
12 hearing officer Kim Wilson to my right. We three are coequal
13 decision makers. As such, during the hearing, the panel
14 members may ask questions or otherwise participate to ensure
15 they have all the information needed to decide this appeal.

16 After the conclusion of the hearing we three will
17 deliberate and decide the issue presented. As a reminder, the
18 Office of Tax Appeals is not a court, and is an independent
19 appeals body, and the panel does not engage in ex parte
20 communications with either party. Our opinion will be based
21 off the relevant evidence. Sorry. The parties' arguments,
22 the admitted evidence, and the relevant law, and we have read
23 the parties' submission. We are looking forward to hearing
24 your argument. Who is present for appellant?

25 MR. BUTLER: David Butler.

1 JUDGE ALDRICH: Could you state your name?

2 MR. POLLAK: My name is Michael Pollak.

3 JUDGE ALDRICH: Is your microphone on?

4 MR. POLLAK: It says it is.

5 JUDGE ALDRICH: Could you bring it a little bit
6 closer? Sorry. I was having trouble hearing you.

7 MR. POLLAK: Can you hear me now?

8 JUDGE ALDRICH: Not really.

9 MR. POLLAK: Maybe I have to turn the volume up?
10 Hello? Hello?

11 MS. JACOBS: I don't think it's on. It's just green.
12 Try pushing the button again.

13 JUDGE ALDRICH: Could you do that again?

14 MR. POLLAK: Can you hear me now?

15 JUDGE ALDRICH: Much better. Thank you very much.

16 All right, and you were indicating another gentleman was here?

17 MR. BUTLER: Yes. David Butler.

18 JUDGE ALDRICH: Okay. And who is present for
19 Respondent or CDTFA.

20 MS. JACOBS: Amanda Jacobs, attorney for CDTFA.

21 MR. HUXSOLL: Cary Huxsoll from CDTFA'S legal
22 division.

23 MR. PARKER: Jason Parker, Chief of Headquarters
24 Operations Bureau.

25 JUDGE ALDRICH: Thank you. Okay. So the issue to be

1 decided is whether appellant is entitled to a refund of the
2 payment of tax penalties and interest collected through escrow
3 for the liens covering first quarter of 1997, through first
4 quarter of 1998. I think I had it submitted March 31st, 1998
5 on the minutes and orders, but effectively the end of the
6 first quarter of '98 is the same.

7 So Mr. Pollak, is that your understanding of the issue?

8 MR. POLLAK: Yeah.

9 JUDGE ALDRICH: Okay. And Respondent or CDTFA?

10 MS. JACOBS: Yes.

11 JUDGE ALDRICH: Great. All right. So we're gonna
12 move on to exhibits now. So CDTFA's exhibits are identified
13 alphabetically, and they are Exhibits A through J. During the
14 prehearing conference, Appellant confirmed receipt of Exhibits
15 A through D, and then CDTFA timely submitted Exhibits E
16 through J on August 8th, 2024. Mr. Pollak, did you receive a
17 copy of Exhibits E through J?

18 MR. POLLAK: From them?

19 JUDGE ALDRICH: Correct.

20 MR. POLLAK: Yeah.

21 JUDGE ALDRICH: Okay. All right. And previously,
22 Mr. Pollak, you hadn't submitted an exhibit index or exhibits,
23 but my understanding is that today you've brought some items
24 that you would like for us to consider as exhibits?

25 MR. POLLAK: Right.

1 JUDGE ALDRICH: Okay. Can we briefly discuss what
2 these are?

3 MR. POLLAK: Okay.

4 JUDGE ALDRICH: Okay. So the first one that, and
5 we'll label this one Exhibit 1 is a hand-written document that
6 starts off saying, "I sent you two e-mails with the dates of
7 the permit." Is that something that you would like admitted
8 into evidence?

9 (Appellant's Exhibit 1 was marked
10 for identification.)

11 MR. POLLAK: Yes.

12 JUDGE ALDRICH: Okay. All right. The next one or
13 the next item is dated June 20th, 2022. It's signed by Lana
14 Bunch?

15 MR. POLLAK: Yes.

16 JUDGE ALDRICH: We'll label that Exhibit 2.

17 (Appellant's Exhibit 2 was marked
18 for identification.)

19 MR. POLLAK: Right.

20 JUDGE ALDRICH: Okay. There's a statement of facts,
21 which was previously submitted as your prehearing conference
22 statement, I believe?

23 MR. POLLAK: Yeah.

24 JUDGE ALDRICH: And you want that as an exhibit?

25 MR. POLLAK: Yeah.

1 JUDGE ALDRICH: It looks to be more the nature of
2 argument, but we'll label it for now as Exhibit 3.

3 (Appellant's Exhibit 3 was marked
4 for identification.)

5 MR. POLLAK: Okay.

6 JUDGE ALDRICH: And there's a fourth page, a Gmail
7 e-mail regarding a public -- public records act request to
8 ABC?

9 MR. POLLAK: Mm-hmm.

10 JUDGE ALDRICH: Okay. And there's no date on this.
11 Is there --

12 MR. POLLAK: -- Well, I did it. I tried to get ahold
13 of them after we had the conference, but it took me a long
14 time, because they kept switching me from Sacramento, and then
15 they told me to go to Redding, and then they told me to go try
16 records. I tried to get records of something from ABC.

17 JUDGE ALDRICH: Okay. And what was the date of this
18 e-mail? Do you know?

19 MR. POLLAK: I don't. Yeah. It should have been
20 last week.

21 JUDGE ALDRICH: Last week? Tuesday?

22 MR. POLLAK: Probably Thursday.

23 JUDGE ALDRICH: Last week Thursday?

24 MR. POLLAK: By the time I ended up getting ahold of
25 them, where the right thing to ask -- I was asking -- I was

1 asking the Sacramento office for a copy of this letter. I was
2 asking the Redding office.

3 JUDGE ALDRICH: For now, I'm just trying to identify
4 the date of it, and it sounds like that was August 15th, on or
5 about August 15th, and that's what I'm going to notate on the
6 exhibit, and also label it Exhibit 4, okay?

7 (Appellant's Exhibit 4 was marked
8 for identification.)

9 MR. POLLAK: Perfect.

10 JUDGE ALDRICH: Okay. Mr. Pollak, is there any
11 reason why you couldn't have submitted these things by the
12 8th?

13 MR. POLLAK: I was trying to with ABC.

14 JUDGE ALDRICH: Okay.

15 MR. POLLAK: And these other things, I found 'em, and
16 figured they were important, so I'd bring them down today,
17 which I thought I could do.

18 JUDGE ALDRICH: Okay. CDTFA, do you have any
19 objections to these four proposed exhibits?

20 MR. HUXSOLL: We object to the exhibits based on the
21 timeliness under Regulation 30420.

22 JUDGE ALDRICH: Okay. All right. So with respect to
23 Exhibit 3, the statement of facts, that was previously
24 submitted, and I think that's fine.

25 MR. POLLAK: Yeah.

1 JUDGE ALDRICH: And so with respect to the Lana Bunch
2 e-mail or the Lana document, which we labeled Exhibit 2, was
3 that -- where did that originate from?

4 MR. POLLAK: That should also have been submitted to
5 Potter.

6 JUDGE ALDRICH: You're saying it was previously
7 submitted to CDTFA?

8 MR. POLLAK: Yeah.

9 JUDGE ALDRICH: Okay.

10 MR. POLLAK: But he didn't send all the information
11 to me.

12 JUDGE ALDRICH: Who is he?

13 MR. POLLAK: Mr. Potter.

14 JUDGE ALDRICH: He didn't send all the information --

15 MR. POLLAK: -- That was presented to him. See I got
16 his thing here. I sent him -- I had a hearing with him.

17 JUDGE ALDRICH: I understand that. There's an
18 internal appeals process at CDTFA.

19 MR. POLLAK: So whatever you want to do, it's okay
20 with me.

21 JUDGE ALDRICH: Umm, okay.

22 MR. POLLAK: This statement had something to do with
23 the State Board of Equalization acknowledging something, and
24 an attitude about their, and a hearing that I tried to make --
25 make payment arrangements on my daughter's liquor license, so

1 I think it's important, because State Board knew about my
2 thing.

3 JUDGE ALDRICH: Okay.

4 MR. POLLAK: In '95.

5 JUDGE ALDRICH: All right, Mr. Pollak.

6 MR. POLLAK: Okay.

7 JUDGE ALDRICH: So I think, I'm gonna go ahead and
8 admit these, and so Exhibits 1 through 4, if CDTFA after the
9 fact would like -- after the conclusion of the hearing would
10 like to do additional briefing on it to address these
11 exhibits, that's something we can explore later, but for now,
12 they're admitted, so that's 1 through 4.

13 (Appellant's Exhibits 1 through 4 were admitted.)

14 And basically, you know, some of these documents were
15 already provided to CDTFA, some of these documents were
16 already provided to OTA, and they aren't overly burdensome.
17 They are about a page a piece. Okay.

18 So you indicated that there's another individual here
19 that you would like to, I think, give testimony; is that
20 correct?

21 MR. POLLAK: Definitely.

22 JUDGE ALDRICH: Okay. Could you tell me a little bit
23 what information you hope to solicit from that individual?

24 MR. POLLAK: He was a good customer of mine. He
25 experienced the road construction in front of my restaurant as

1 a witness.

2 JUDGE ALDRICH: Okay. So --

3 MR. POLLAK: -- He also --

4 JUDGE ALDRICH: -- Excuse me. So the testimony, is
5 it -- intended to show that there was some sort of road
6 construction that he had personal knowledge as a customer,
7 etc.?

8 MR. POLLAK: Also that he had knowledge of my house
9 catching on fire in 2005 that had all my documents in there
10 that I brought from my restaurant to my house.

11 JUDGE ALDRICH: Okay. So, you know, on the minutes
12 and orders I indicated that witnesses were supposed to be
13 identified by August the 8th, and then so this is kind of a
14 new witness, um, that's why I'm trying to figure out, well,
15 why do we need this witness? Do you understand?

16 MR. POLLAK: Sure. To verify everything I'm going to
17 say at this hearing.

18 JUDGE ALDRICH: Okay. So there was -- You had made a
19 request for a few individuals to appear at this hearing.

20 MR. POLLAK: Right. Mm-hmm.

21 JUDGE ALDRICH: With respect to that request, those
22 -- that request has been denied, however, we will allow you to
23 present your witness, so, you know, during the hearing
24 conference you indicated that Eileen Steed, you wanted her to
25 appear, somebody from ABC to appear, and Mr. Potter to appear.

1 CDTFA indicated that they would object if this were a formal
2 request, and I indicated that the stated reasons for the
3 request for those people to appear wasn't particularly
4 compelling, and that I was inclined to deny it.

5 I gave you the opportunity to submit the request for
6 subpoenas. You did submit those requests for subpoenas on the
7 31st, via fax, however, we had talked about submitting things
8 via e-mail, right? Whether or not the parties agreed to
9 receive things electronically. Both parties confirmed that
10 that was the case, but the point there is that the -- sending
11 it via fax created a little bit of administrative delay, and
12 so CDTFA requested an extension to respond.

13 They responded on the 13th, and I prepared an order
14 denying the subpoena request, but basically, the reason for
15 the denial, and/or one of the reasons that's stated thereon is
16 that you -- you indicated that you had questions to ask, but
17 you didn't indicate what questions you had, or any attempts to
18 make those questions to those individuals, so it's not
19 particularly -- so there's an informal discovery process, and
20 you didn't go through that process, okay?

21 In any event, the subpoena requests are denied, however,
22 as I previously indicated, we will be allowing your witness to
23 proceed, even though it was untimely identified, okay?

24 MR. POLLAK: I don't agree with you at all, and let
25 me tell you why.

1 JUDGE ALDRICH: Okay.

2 MR. POLLAK: I don't e-mail. I don't text. Potter
3 knows that. You can tell by my writing I'm not an attorney.
4 I tried to do what you wanted me to do. I gave you the
5 subpoenas. These are important people to depose, and you
6 don't have a wit -- a person that I can depose. Instead of I
7 had questions, why would I give you my questions to depose
8 them so they can come up with an answer?

9 I wanted it in person. That's why I requested hearings
10 in person. With Potter, the first time, I waited three years
11 for a hearing in person. The first time we went there, I was
12 the only one there. I requested ABC, state -- Then, who was
13 doing this in person, they never came, so we had to reset the
14 hearing, so maybe I don't do everything right, but I'm telling
15 you whatever I say is the truth, and I wanted to depose these
16 people about it, but I'll do it in a statement then, because I
17 think it's wrong that these people don't show up, when they're
18 -- when they write things. They're the ones that wrote it,
19 not me.

20 JUDGE ALDRICH: I understand that.

21 MR. POLLAK: Well, I don't understand why they can't
22 show up. I have a lot of problems with Elaine. I have a lot
23 of problems --

24 JUDGE ALDRICH: -- You will have an opportunity to --

25 MR. POLLAK: -- But she's not here. She's not here,

1 and she should have been, and let's put it this way. I'll
2 redo everything, and we come back on a different date. I want
3 her here in person to depose her, and Potter, and someone from
4 ABC.

5 This thing has to do with two liquor licenses that were
6 taken by ABC and the -- and the State Board knew about the
7 licenses, had holds on them, didn't take them. So they had --
8 So whatever it is, a -- the State of California --

9 JUDGE ALDRICH: -- Mr. Potter? Sorry. Mr. Pollak.
10 Excuse me.

11 MR. POLLAK: Okay.

12 JUDGE ALDRICH: You know, I understand that you don't
13 agree with the subpoena request denial, but that is the
14 decision that --

15 MR. POLLAK: -- Okay. What is your reason for it?

16 JUDGE ALDRICH: Well, I stated on there that you
17 haven't met the burden of proof to show good cause for those
18 subpoena requests.

19 MR. POLLAK: I sent you statements from them. Right?

20 JUDGE ALDRICH: And those have been admitted into the
21 record.

22 MR. POLLAK: Okay. And they should have to be here
23 so I can ask them questions about their writings.

24 JUDGE ALDRICH: I understand that was your request.
25 The request was denied, and --

1 MR. POLLAK: -- Also, they denied it before I even
2 had a request. They're attorneys.

3 JUDGE ALDRICH: I'm not sure who you're referring to.

4 MR. POLLAK: They're attorneys. They're attorneys.
5 I'm a private citizen trying to get my -- get the facts
6 straight. I'm willing to tell the truth, and as far as I'm
7 concerned, if they don't depose themselves here, they're not
8 gonna be able -- they're not gonna have -- they're not telling
9 the truth. They can't come up and be a witness. So you tell
10 me that's right?

11 JUDGE ALDRICH: So the first time that OTA became
12 aware of your request for those people to appear was during
13 the prehearing conference.

14 MR. POLLAK: Potter knew I wanted him. I met with
15 ABC. I met with the -- I met with people from -- from State
16 Board of Equalization. They're the ones that told me if I
17 could prove that there was a road closure, hurt the business,
18 they would reconsider. I told Potter --

19 JUDGE ALDRICH: -- Mr. Pollak, you're welcome to
20 incorporate those things into your argument, and you've been
21 granted time to do that, but with respect to the subpoena
22 requests, it's been denied.

23 MR. POLLAK: Okay. Can I -- Can we wait for another
24 time, and then I'll resubmit for these people to be here in
25 person?

1 JUDGE ALDRICH: You're asking whether or not we can
2 have a continuance?

3 MR. POLLAK: Yeah.

4 JUDGE ALDRICH: And then resubmit the request?

5 MR. POLLAK: Right.

6 JUDGE ALDRICH: Even though everybody else is here
7 and prepared today?

8 MR. POLLAK: Who's everybody? The people I
9 subpoenaed aren't here.

10 JUDGE ALDRICH: The representatives from the other
11 party are. All right. I think --

12 MR. POLLAK: -- Let's put it this way. If you listen
13 to him, and say -- and listen to me what I tell you about
14 this, are you going to take it as fact, or a question?

15 JUDGE ALDRICH: Okay. So it sounds like you're
16 asking for me to distinguish between testimony and argument.
17 Argument is based off of evidence that's been admitted into
18 the record, whereas testimony may be considered evidence to
19 prove a fact or disprove a fact.

20 MR. POLLAK: Mm-hmm. I don't know what you just
21 said.

22 JUDGE ALDRICH: Okay. So testimony, when somebody's
23 speaking under oath, may be considered evidence, right?

24 MR. POLLAK: Okay.

25 JUDGE ALDRICH: And so we can, if you say something

1 happened, then that may be used to prove or disprove
2 something.

3 MR. POLLAK: Okay.

4 JUDGE ALDRICH: Okay?

5 MR. POLLAK: Right. But if I say something, then ask
6 the people I wanted to subpoena, they can collaborate what I'm
7 saying, instead of you thinking what I'm saying. They can
8 collaborate everything. I don't understand why the first time
9 on the phone they would say no right away. They said no right
10 away on the phone, and now -- and now, because I don't e-mail,
11 I faxed you everything, and I -- Why -- Let's put it this way.
12 Does an attorney give you all the information he wants to ask
13 a subpoenaed person?

14 JUDGE ALDRICH: Excuse me?

15 MR. POLLAK: Does attorney give you a list of
16 everything he's gonna ask? A subpoenaed person?

17 JUDGE ALDRICH: So --

18 MR. POLLAK: -- That's why I didn't give it to you,
19 cause I didn't --

20 JUDGE ALDRICH: -- Please do not interrupt me. Do we
21 have that clear?

22 MR. POLLAK: Okay.

23 JUDGE ALDRICH: I think you're kind of mixing some
24 things up. There's an informal discovery process to ask
25 questions that isn't a subpoena, where as a subpoena in this

1 instance is to force somebody to or compel somebody to appear,
2 okay? In this process, you didn't ask any questions for -- of
3 those individuals. For the ABC person, you didn't identify an
4 individual, so we have two employees of CDTFA, or at least it
5 appears that they're employees, and you know, you were given
6 the opportunity to submit your reason, your good cause reasons
7 for the subpoena requests. The only thing that you indicated
8 is that you have questions to ask them.

9 MR. POLLAK: What more do you want?

10 JUDGE ALDRICH: Right.

11 MR. POLLAK: I mean, I have questions to ask them
12 because of what they said.

13 JUDGE ALDRICH: Yeah.

14 MR. POLLAK: What they said in their statements,
15 okay?

16 JUDGE ALDRICH: And I appreciate that, but I reviewed
17 the law, and the party submissions, and determined that you
18 didn't meet the good cause showing, so there's not going to be
19 a subpoena today, that those individuals are not showing up.

20 MR. POLLAK: I know.

21 JUDGE ALDRICH: Okay.

22 MR. POLLAK: They don't want to answer questions, and
23 they don't care if they answer questions. It's their
24 employees. I mean, it's not my employees.

25 JUDGE ALDRICH: Okay.

1 MR. POLLAK: Is there anybody here from the State
2 Board of Equalization that was in the last meeting with
3 Potter?

4 JUDGE ALDRICH: Not to my knowledge.

5 MR. POLLAK: Ask them? Who's representing --

6 JUDGE ALDRICH: -- CDTFA, is anybody here present
7 that was at the appeals conference with Mr. Potter and
8 Appellant?

9 MR. HUXSOLL: No. The decision, which is Exhibit A,
10 lists those appearing for the department. They were Bridget
11 Bob, a business taxes administrator, and Ryan Shaw, also a
12 business taxes administrator, and Ms. Steed had sent a
13 position on the Department's argument prior to the appeals
14 conference, so it was part of the appeals conference process.

15 JUDGE ALDRICH: Thank you.

16 MR. POLLAK: Okay. Now one of those persons in the
17 meeting with Mr. Potter acknowledged that he was involved in a
18 restaurant that had road construction, and it killed the
19 business. Your employee, and it should be -- it should have
20 been in a deposition or something when I went down there.
21 When I went down in a meeting two different times.

22 JUDGE ALDRICH: When you say, "your employee," are
23 you directing that at CDTFA or?

24 MR. POLLAK: State Board of Equalization.

25 JUDGE ALDRICH: Okay. All right. So --

1 MR. POLLAK: -- Now you know why I wanted Mr. Potter
2 to be here, so he could admit what they told him at that
3 conference that I went to.

4 JUDGE ALDRICH: So the stated reason for Mr. Potter
5 to appear is that construction can have a negative impact on a
6 business. Is that what you're saying?

7 MR. POLLAK: And his statements of what he said in
8 here, and to make sure he knew that I had sent him something
9 saying if he needed any more information, I'd be glad to give
10 it to him, let me know, and after that -- I did that and sent
11 it to him, he sent the denial without asking me for more
12 information that I offered him.

13 JUDGE ALDRICH: Mr. Pollak, I think these are -- You
14 know, you have to present your case as best you see fit, but
15 these are things that, like, you can provide testimony to.

16 MR. POLLAK: Yeah. But he can't, and neither can
17 Elaine, which that's why I subpoenaed them.

18 JUDGE ALDRICH: You didn't subpoena them. You did
19 request for one, but that's a bit semantic.

20 MR. POLLAK: Let me ask you a question then. If I
21 would have subpoenaed them instead of the request, what would
22 happen?

23 JUDGE ALDRICH: So this isn't an opportunity to, you
24 know, examine procedure. You've asked to continue the
25 hearing, so that you can then subpoena them again or attempt

1 to subpoena them again. Is that what you want to do, or --

2 MR. POLLAK: -- Exactly. I want to see them here in
3 a hearing like I requested.

4 JUDGE ALDRICH: You can certainly make that request
5 again, but there's no -- there's no guarantee that the request
6 for a subpoena will -- will work.

7 MR. POLLAK: How can it not when they have pertinent
8 information to this case?

9 JUDGE ALDRICH: Okay.

10 MR. POLLAK: I mean --

11 JUDGE ALDRICH: -- Excuse me. CDTFA, do you have any
12 objection to making a continuance?

13 MR. HUXSOLL: Yes. CDTFA is prepared to present
14 today, and we continue to make the same arguments in response
15 to a subpoena request that was made in our prior submission.
16 We do not change our position on that.

17 JUDGE ALDRICH: Okay.

18 MR. POLLAK: What are you afraid of?

19 JUDGE ALDRICH: Mr. Pollak, please don't direct your
20 comments to the Respondent. You can direct them to me.

21 MR. POLLAK: What are they afraid of?

22 JUDGE ALDRICH: I'm not sure.

23 MR. POLLAK: It's gotta be something. Why don't you
24 ask them.

25 JUDGE ALDRICH: You know, at this time, I don't think

1 this is being very constructive. We're gonna take a 5 to 10
2 minute break. Actually, it will be a 10-minute break. We'll
3 resume the hearing and the record at 10:13, so I'll see
4 everyone then. We're going off the record, Mr. Ellington.

5 (Pause in the proceedings from 10:03 a.m.
6 until 10:11 a.m.)

7 JUDGE ALDRICH: Okay. We're gonna go back on the
8 record. Thank you, Mr. Ellington.

9 Mr. Pollak, so we've been discussing the subpoena
10 requests, and the subpoena request denial, so I, and then you
11 indicated that you'd like a continuance. CDTFA objected to
12 the continuance. I have an alternative that I'd like to
13 propose.

14 So instead of a continuance, one option might be that we
15 leave the record open, and then, Mr. Pollak, you could have an
16 opportunity to write whatever questions that you would like
17 with a limit on the questions, and then send them to CDTFA for
18 them to respond.

19 MR. POLLAK: How about after they respond? Am I
20 gonna be able to respond again?

21 JUDGE ALDRICH: So with additional briefing, either
22 party can make a request to make a, you know, another briefing
23 or submit additional briefing, that's subject to a good cause
24 review by me in this appeal.

25 MR. POLLAK: That's why I wanted them in person like

1 I requested originally when I started this whole process. I
2 waited from 2018 to 2024 to do everything in person.

3 JUDGE ALDRICH: I appreciate that, so we're going to
4 proceed today. You have 25 minutes to make your presentation
5 and provide testimony. I believe you indicated that you
6 wanted to provide testimony as well, Mr. Pollak. Would the
7 gentleman that's accompanied you join you at the table,
8 please?

9 MR. BUTLER: It's on.

10 JUDGE ALDRICH: Thank you. Could you please state
11 your name once again?

12 MR. BUTLER: My name is David Butler.

13 JUDGE ALDRICH: Good morning, Mr. Butler. Could you
14 please raise your right hand? Do you swear or affirm to tell
15 the whole truth and nothing but the truth?

16 MR. BUTLER: I do.

17 JUDGE ALDRICH: Thank you. And, Mr. Pollak, could
18 you raise your right hand? Do you swear or affirm to tell the
19 whole truth and nothing but the truth?

20 MR. POLLAK: I do.

21 JUDGE ALDRICH: Thank you, sir. Okay. So everyone
22 is here. We plan for the hearing to proceed as follows.
23 We'll have approximately 25 minutes for testimony and opening
24 presentation. If you need additional time, please request it.
25 We may be able to accommodate that. CDTFA will then have 20

1 minutes to present a combined opening and closing. I've
2 allotted approximately 5 to 10 minutes for questions from the
3 panel, and then, Mr. Pollak, you'll be given an opportunity to
4 provide a rebuttal or closing statement for about 5 to 10
5 minutes. Okay. I've sworn in Mr. Pollak, and along with the
6 other --

7 MR. BUTLER: Butler.

8 JUDGE ALDRICH: Mr. Butler. Thank you, sir.

9 So you can ask questions of Mr. Butler, Mr. Pollak, or
10 either witness may provide testimony in the form of a
11 narrative, so I'll leave that up to you, Mr. Pollak. Are you
12 ready to begin with your presentation?

13 MR. POLLAK: Okay. So presentation start with him or
14 me talking first?

15 JUDGE ALDRICH: It can be either.

16 MR. POLLAK: Okay.

17 JUDGE ALDRICH: And --

18 PRESENTATION

19 MR. POLLAK: I had a liquor license that was opened
20 up on August 24th, 19 -- Okay. 1995. Right next to it, it
21 says, "12 months." So I'm in -- under the impression that
22 when I opened up the license in August, it went for 12 months,
23 and then I would pay the next year fee, and then I would pay
24 the next year fee, but in one of these statements here, it
25 said March, so I opened up and figured when I bought it out of

1 bankruptcy, started the thing, that's when the liquor license
2 started, because it said 12 months.

3 Now ABC says it started in August -- I mean in March,
4 okay? Well, I went to ABC to try and sell the liquor license
5 in August, and I had told -- The State Board of Equalization
6 called me up. I told them, I went out of business because of
7 road construction killed my business, and I was gonna sell my
8 liquor license and pay 'em back, so I was under the impression
9 that my liquor license was good for 12 months when I started
10 it, which the statement says that I told you. That I -- went
11 on these forms, okay?

12 So if they knew, the State Board of Equalization put a
13 hold on it in March. They had talked to ABC. ABC, they asked
14 them how much the liquor license was worth, and they said
15 between 25 and \$30,000, which is in this paperwork here.

16 They knew, I guess. I don't know how this March thing
17 came up, but they must have known in March I was supposed to
18 pay a renewal fee. Well, I wasn't using the -- And I didn't
19 know. I thought I had until August, but they knew that the
20 license should have been paid. I was under the --

21 And number one -- another thing is, I would never expect
22 after I paid \$25,000 for a liquor license for them to just
23 revoke it because they -- I didn't pay the renewal fee. I
24 figured, I wasn't using it. Soon as I settled the thing and
25 try to sell it, which I tried to do. I had a buyer, but by

1 the time I went to do it, they said it was revoked and I
2 couldn't get it, but ABC should have known.

3 Here's another liquor license, from my daughter. ABC,
4 the State Board of Equalization had a -- had a hold on it.
5 Let's go back.

6 In -- In -- In about 2007, this restaurant owed money to
7 the State Board. I didn't own it. My kids owned it. My
8 brother owned it. I went to ABC and made arrangements to make
9 payments on it, and paid it off.

10 In 2010, and 9 -- At the end of 2009, because I was in
11 prison, my brothers couldn't keep the restaurant going. They
12 kept it going until, I think, the middle of December and had
13 to close it, when the State Board had a hold on the license at
14 that time.

15 I went to -- made an appointment to go to try and make
16 payment arrangements on this license. Again, because I had
17 performed before. I owned liquor licenses in the Bay Area. I
18 paid sales taxes for restaurants in the Bay Area for 20 -- I
19 spent 24 years owning restaurants and paying sales tax. I
20 went to them, Elaine was there. She -- Me and my daughter are
21 there trying to make payment arrangements. She mentions that
22 I owed money from '98.

23 I told her at that time, that I didn't owe any money
24 because the State got the liquor license, and I was trying to
25 sell it to pay it off. At that time there, that hearing,

1 instead of making payment arrangements, she came up with
2 \$15,000 to pay in three months.

3 I don't know how the State works, but that's a little
4 exorbitant, especially when we were closed trying to open up
5 another restaurant and keep employees working. That's why I
6 wanted Elaine here.

7 Then, they had a hold on this liquor license right here
8 from 2010. I couldn't pay \$15,000 in three months, so I went
9 down with my son who had money, who -- who I put the State --
10 the -- the sales tax in his name, opened up a new business.
11 We went on for years. The ABC wanted me to put the liquor
12 license in his name, so I went down there to apply.

13 The State Board knew from 2010 they had a hold on this
14 license. I received a letter from ABC. That's what my
15 request was from ABC. To get the letter that was sent to
16 Lana, and Howard Pollock saying they were going to revoke the
17 license in 10 days.

18 At that time, the City of Paradise decided to take the
19 parking in front of this restaurant. They told me I had 10
20 days to go down and object to it. Had something to do with
21 parking for a restaurant. I went down to the hearing, told
22 the city council that I needed this parking. The only parking
23 I owned was down below a hill at the bottom of my lot.

24 They re -- They changed the road in front of my
25 restaurant, and I said, I'm finished here." Instead of paying

1 the 15 -- the money that I owed the State Board, because we
2 were making payments all -- for these three years paying it --
3 paying it down. I said, "Let's see what happens between ABC
4 and the State Board and Equalization, so that's why I say
5 originally the State of California got two licenses worth 50
6 to \$60,000.

7 I made all the payments the second time, so I paid that
8 other one off, but still, ABC had a license, so I really think
9 I don't owe one dime. In fact, I think I should get money
10 back from the other license, because I made all the payments,
11 and it was just -- I wanted to see, test between ABC and the
12 State Board of Equalization and their employees. How they --
13 How they treat a person that's been in business for over, at
14 that time, 40-something years. Running restaurants 25 years.
15 Owning other businesses for years. Paying all the taxes, and
16 fees, everything. This is how the State Board of Equalization
17 treated me.

18 That's why you have this letter from Lana, and that's why
19 I wanted Elaine here to verify everything that I just told
20 you.

21 JUDGE ALDRICH: Does that --

22 MR. POLLAK: -- That's it.

23 JUDGE ALDRICH: Okay. And then, are you gonna be
24 asking --

25 MR. POLLAK: -- Oh, yeah. This is David Butler. He

1 was a good employee. Not just a good employee, but my
2 father-in-law. He used to work in construction. Come up and
3 lived in Chico. Worked in the Bay Area. Used to come up, a
4 good customer, about how my restaurant was going before the --
5 they chopped the road in front of my restaurant, and what we
6 went through after.

7 Also, he knows about the fire that had my records in
8 there that you asked for if I could prove that there was a
9 fire.

10 MR. BUTLER: Actually, I've -- I've been going to
11 Mike's businesses for -- He's actually talking about two
12 different subjects, and one of them is the earlier subject
13 with Park Avenue Joe's in Chico in which they came in and they
14 renewed the road service all the way down to bedrock, and it
15 took them several months to do, and through a rainy part of
16 the season, so they didn't get the work done every single day.
17 It was not done competently, in my opinion. They had it --
18 You could not get in and out of his parking structure to go to
19 his restaurant.

20 It literally destroyed that business, and then when you
21 come around to the later restaurant up in Paradise, they came
22 -- the city came in and technically did the same thing and
23 destroyed the parking in front of his -- in front of his
24 building in which he -- if he wanted to get -- use the back
25 parking lot, the area in which he had enough room for parking

1 down below in the back below hill, he'd have had to put in an
2 elevator or an escalator to meet ADA laws, and that would have
3 -- that's impossible, you know, for a small business owner to
4 come up with thousands and thousands of dollars just because
5 the city decided it didn't want -- it didn't want him to have
6 his parking in front of his building any longer, and he hasn't
7 even mentioned what PG&E did to his parking in front of his
8 building. I've been witness to this for a long time.

9 JUDGE ALDRICH: Could you just please slow it down a
10 little bit?

11 MR. BUTLER: Okay. Sorry.

12 JUDGE ALDRICH: We do have a stenographer that's
13 trying to --

14 MR. BUTLER: -- I'm sorry about that.

15 JUDGE ALDRICH: That's okay.

16 MR. BUTLER: I get a little excited when I'm speaking
17 in front of some people. And then also he mentioned the fire
18 in his house. His house had a serious fire. The furnace
19 caught fire, and burned down, and burned the house down, and
20 he -- You could probably -- He could probably get the
21 information from the company that went in and remodeled the
22 whole house after the fire, so I mean, he has documentation of
23 it, it's just that he's not a tech savvy guy. It's not like
24 he can just go into his computer and punch in a couple of
25 buttons and boom, all this information pops up. He's trying

1 to leave the -- stay in business, basically, is what he's
2 trying to do.

3 JUDGE ALDRICH: Thank you. Mr. Pollak, I do have a
4 question for you.

5 MR. POLLAK: Go on.

6 JUDGE ALDRICH: Do you understand that this hearing
7 is only for the Park Avenue Joe's restaurant?

8 MR. POLLAK: Yes, but it also has something to do
9 with the State Board of Equalization's employees.

10 JUDGE ALDRICH: Okay.

11 MR. BUTLER: They -- They've cited it.

12 JUDGE ALDRICH: Okay. I have additional questions.
13 So your first ABC license was that Park Avenue Joe's?

14 MR. POLLAK: No. That was in Hayward, California --
15 That was I owned on was Hayward, California, 1979.

16 JUDGE ALDRICH: Okay.

17 MR. POLLAK: And also in San Francisco in 1984. I
18 was also managing a restaurant with partners with -- My dad
19 was partnered with someone in '76 and '79.

20 JUDGE ALDRICH: Okay.

21 MR. POLLAK: So I've been in the restaurant -- And
22 then I had Park Avenue Joe's.

23 JUDGE ALDRICH: So specifically with ABC licenses,
24 how many ABC licenses did you have prior to Park Avenue Joe's?

25 MR. POLLAK: I was on two.

1 JUDGE ALDRICH: You were on two?

2 MR. POLLAK: I was managing three of them.

3 JUDGE ALDRICH: Were you responsible for making the
4 payments on the renewals for those other two?

5 MR. POLLAK: Not really, because my dad was. We were
6 partners.

7 JUDGE ALDRICH: Okay.

8 MR. POLLAK: I was, like, you could say the general
9 manager, manager. My dad was just a -- He was just a --
10 putting up the money and make sure I worked hard.

11 JUDGE ALDRICH: Understood.

12 MR. POLLAK: He used to come -- He used to come in --
13 He played golf every day, so this was another business. He
14 had multiple businesses, my father, so he trusted me to open
15 up a brand new restaurant in '79, which lasted until I sold
16 it, very successful, in '86. Moved up to Chico to take care
17 of his mom and go into -- supply, which, he owned part of that
18 too.

19 JUDGE ALDRICH: Thank you.

20 MR. POLLAK: So that's how I ended up in Butte
21 County.

22 JUDGE ALDRICH: At this time I'm going to refer to
23 the panel. Hearing Officer Wilson, do you have any questions
24 for appellant?

25 HEARING OFFICER WILSON: I did. Let's see. You

1 mentioned that you've had several licenses?

2 MR. POLLAK: Yeah.

3 HEARING OFFICER WILSON: So you're familiar with the
4 whole process. Can you explain --

5 MR. POLLAK: -- Yeah. I'm not familiar with the
6 whole process. I just buy the license and operate. I'm not
7 an attorney, technical, nothing. I just -- Tell you the
8 truth, I ain't the smartest person in the world, but I'm one
9 of the hardest workers in the world.

10 HEARING OFFICER WILSON: Okay. So when you -- the
11 license would come due, was it your responsibility to pay the
12 renewal fee? Did you see the -- the statement from ABC saying
13 that you had to renew your license?

14 MR. POLLAK: Yeah. I made renewal fees. I paid
15 renewal fees until I stopped using it. Then I didn't -- Then
16 I didn't pay -- I was -- I didn't even think -- To tell you
17 the truth, I thought I had 12 months from when I opened up,
18 because that paper said I had 12 months, but I'm not saying
19 that they were wrong. I'm just saying what I was under the
20 impression of.

21 HEARING OFFICER WILSON: Okay. So in July of '98
22 when they revoked your license, did they send you a notice?

23 MR. POLLAK: I don't have no clue. I don't know.
24 Where -- Where -- Where did they send it? I had -- I don't
25 know where they sent it. If they sent it to the restaurant

1 address, I never received it.

2 HEARING OFFICER WILSON: Okay. Thank you.

3 MR. POLLAK: So that's the thing. I'm not sure. I
4 was so upset with what happened in March and January to that.
5 I had a restaurant. I was a single father of four kids,
6 raising four kids. I guarantee I didn't do everything to the
7 right probably, cause they might have sent it, but I don't --
8 I never even thought of it, because I was under the impression
9 that it was good until August, and I told the State Board in
10 January whenever they got ahold of me, that it was worth more.
11 They verified it, and I was gonna sell it, so it's not like I
12 -- I went to sell it, and then they told me it was revoked in
13 July. I have no clue.

14 I mean, then I see something in March in some of these
15 paperworks, but I didn't open up, as you can see, until August
16 25th, and it said for 12 months. I figured your license is
17 good for 12 months.

18 The other licenses I was on, I was on, but my father was
19 on too, and he did -- he handled with his people. He would
20 handle with lawyers or whatever to make sure. We were a
21 corporation, so he handled the -- he handled some of the
22 stuff, but I was the guy -- I was the worker that ran, hired,
23 built, did everything for the restaurant.

24 HEARING OFFICER WILSON: Okay. Thank you. Another
25 question in regards to the amounts that you said the estimates

1 were overstated?

2 MR. POLLAK: Yeah.

3 HEARING OFFICER WILSON: Can you explain how you came
4 up with the figures for the reduction?

5 MR. POLLAK: I was doing great. I was doing great in
6 April. I would have done fantastic in May, because that's
7 when college people come in to continue and graduate in Chico.
8 They stopped everything. I was doing probably a third of the
9 business that I was. I was trying -- The reason I wasn't
10 paying the State Board is because I was trying to last until I
11 can start making some money to pay back the money to them.

12 It just happened I went to the City to ask for more
13 money, because of them killing my business. Nope. I just
14 didn't have the money, and then all of a sudden after, because
15 this lasted from May, they opened up the road in December.
16 December of 1998 was torrential rains in Butte County. Rivers
17 flooded, everything, so people don't go out as much, so I just
18 got so upset, I said, "Screw it, I'll take a \$125,000 loss."

19 HEARING OFFICER WILSON: Okay. So you're saying it
20 was just based on your knowledge that you came up with the
21 estimates? Not any evidence to support?

22 MR. POLLAK: I had evidence, but it was burnt in the
23 fire. I could have had evidence, but all my stuff from the
24 restaurant went to my house, and that's when the fire
25 happened.

1 HEARING OFFICER WILSON: So another question --

2 MR. POLLAK: -- And I should have filed. I admit
3 that.

4 HEARING OFFICER WILSON: Okay.

5 MR. POLLAK: I admit it. I admit it. I should have
6 filed those tax returns, but even the person from the State
7 Board that was in Potter's meeting mentioned if I could prove
8 there was a road construction cause, they would adjust it.

9 That was from them, Mr. Potter and State Board of
10 Equalization. It wasn't from me, so I have here some permits
11 from Chico saying they started work at this date, and I told
12 them in a statement I could produce 30 more.

13 HEARING OFFICER WILSON: Okay.

14 MR. POLLAK: And have -- And have witnesses. That's
15 when Potter decided not to ask me for my other witness, or the
16 other permits, just to deny it.

17 HEARING OFFICER WILSON: Thank you.

18 MR. POLLAK: And I tried to go back with him, but he
19 says I had to go a different direction.

20 JUDGE ALDRICH: Mr. Pollak?

21 MR. POLLAK: Okay.

22 HEARING OFFICER WILSON: That answered my question.
23 Thank you.

24 JUDGE ALDRICH: Judge Long, did you have any
25 questions.

1 JUDGE LONG: No questions. Thank you.

2 JUDGE ALDRICH: Okay. And, Ms. Jacobs, did you have
3 any questions for Appellant or the other witness?

4 MS. JACOBS: No questions, thank you.

5 JUDGE ALDRICH: Okay. Ms. Jacobs, are you ready to
6 proceed with your combined opening and closing?

7 MS. JACOBS: I am. Thank you.

8 JUDGE ALDRICH: Okay.

9 COMBINED OPENING AND CLOSING STATEMENT

10 MS. JACOBS: Good morning. Appellant, a sole
11 proprietor, owned and operated the restaurant Park Avenue
12 Joe'S in Chico, California from August 1995 to January 1998.
13 Appellant obtained a Alcoholic Beverage Control or ABC License
14 in August 1995 to make alcohol sales at the restaurant.

15 On March 23rd, 1998 Appellant notified the Department's
16 predecessor, BOE, that the restaurant had ceased business
17 operations, and that he hoped to sell the liquor license.
18 That same day the Department also asked the ABC to place a
19 hold on Appellant's liquor license, which ABC records indicate
20 occurred on April 2nd, 1998, Exhibit A, Page 16, and Exhibit
21 H.

22 Business and Professions Code or BPC Section 24049
23 provides that the transfer of any Alcohol Beverage License may
24 be refused if the licensee is delinquent in the payment of any
25 taxes due under various laws, including the Sales and Use Tax

1 Law, which means placing a hold on a license with ABC may
2 prevent the licensee from selling or otherwise transferring
3 their license if the license holder doesn't pay their tax
4 debt.

5 When Appellant informed the Department on March 23rd,
6 1988 that the restaurant had closed, the Department informed
7 Appellant he needed to file his delinquent Sales and Use Tax
8 Returns, Exhibit H. Appellant stated he would complete and
9 mail the returns at that time, but the returns were never
10 filed. The Department then estimated the sales tax due for
11 these quarters based on Appellant's previously reported
12 taxable sales and timely issued the following.

13 An NOD for first quarter 1997 to second quarter 1997,
14 issued on September 26th, 1997, an NOD for third quarter 1997
15 and fourth quarter 1997, issued on February 20th, 1998, and an
16 NOD for January 1998, issued on June 19th, 1998. After
17 Appellant's liabilities became final, the Department sent
18 Appellant several notices regarding the outstanding
19 liabilities owed, which Appellant acknowledged receiving at
20 the appeals conference, Exhibit D and Exhibit A, Pages 7 and
21 12.

22 In 1998, the Department filed real property liens to
23 satisfy Appellant's unpaid sales tax liabilities which it
24 re-reported in 2007, and 2008, and in 2017, Exhibit E and
25 Exhibit H.

1 On July 2nd, 1998, Appellant's liquor license was
2 automatically and permanently revoked after failure to pay the
3 annual license renewal fee by March 31st, 1998, Exhibit A,
4 Page 16. At this time, Business and Professions Code Section
5 24049.4(a) provided that the Department's predecessor, the
6 State Board of Equalization, quote, "May seize and sell," end
7 quote, an Alcoholic Beverage License if upon termination of
8 business the license holder is delinquent on payments of any
9 taxes due under the Sales and Use Tax Law. This seizure and
10 sale may only occur if the licensee surrenders their license
11 to ABC or fails to pay their annual renewal fee.

12 On January 7th, 1999, the Department called ABC to check
13 on the status of the liquor license and was informed it was
14 permanently revoked the previous year, Exhibit H. The
15 Department never seized Appellant's liquor license, as it was
16 not aware Appellant had failed to pay the annual renewal fee
17 to ABC until six months after the license had been revoked,
18 see Exhibit H. The Department's tax liens were paid in full
19 upon appellant's sale of real property effective February
20 28th, 2018, Exhibits F and G.

21 On May 8th, 2018, Appellant filed a timely claim for
22 refund for the amounts paid through escrow which were applied
23 to his sales tax liabilities for the liability period, Exhibit
24 B. Appellant also requested relief of penalties and interest,
25 Exhibit A, Page 18, and Exhibit I.

1 The issue in this appeal is whether Appellant is entitled
2 to a refund of the payment of tax, penalty, and interest
3 collected through escrow for the first quarter of 1997 through
4 March 31st, 1998.

5 Generally, retailers must file a Sales and Use Tax Return
6 on or before the last day of the month following each
7 quarterly reporting period, Revenue and Taxation Code or RTC
8 Section 6452. If they fail to make a return, the Department
9 must make an estimate of the tax, RTC 6511. It is the
10 taxpayer's responsibility to maintain and make available all
11 records necessary to determine the correct tax liability
12 including bills, receipts, invoices or other documents of
13 original entry, RTC Section 7053.

14 Appellant has the burden of proof to provide evidence
15 showing that the Department's estimate of taxable sales is
16 excessive, Regulation 30219.

17 Here, Appellant did not file Sales and Use Tax Returns
18 for any of the periods at issue, therefore the Department made
19 estimates of Appellant's liability relying on Appellant's
20 reported sales for prior quarters. While Appellant has made
21 claims that street construction by the City of Chico
22 negatively affected his business, he has not provided any
23 documentary evidence to that effect.

24 For example, Appellant could have provided sales records,
25 bank statements for the business bank account for before and

1 after the liability period, profit and loss statements,
2 federal and state income tax returns, or purchase records from
3 his vendors, but he has provided no documents supporting his
4 position, and according to the Appeal of TFCG Incorporated,
5 which is a 2019 OTA case, "Unsupported assertions are not
6 sufficient to satisfy a taxpayer's burden of proof," thus
7 Appellant has not provided sufficient evidence to warrant a
8 reduction in the measure of tax.

9 Appellant has also argued that a refund is warranted
10 because the Department should have seized and sold his liquor
11 license, however, Appellant did not pay the license fee and
12 allowed the license to be revoked. There is no law that
13 requires the Department to seize and sell a liquor license
14 owned by a delinquent taxpayer, nor is there a requirement
15 that the Department limit its collection actions to ones
16 preferred by a taxpayer.

17 Furthermore, RTC Section 6757 states that, "Failure to
18 pay one's Sales and Use Taxes that are due and payable,
19 including penalties and interest, becomes a perfected and
20 enforceable state tax lien," and in fact the Department's
21 liens on Appellant's real property were filed before it became
22 aware that the liquor license had become revoked, thus the
23 Department's collection on Appellant's liabilities via its
24 real property liens was appropriate.

25 RTC Section 6592 provides that, "Penalties, including

1 failure to file finality and amnesty penalties, may be
2 relieved if that person's failure to make a timely return or
3 payment is due to reasonable cause and circumstances beyond
4 their control and occurred notwithstanding the exercise of
5 ordinary care and the absence of willful neglect."

6 Appellant has filed the necessary of statement, signed
7 under penalty of perjury, to support his request for penalty
8 relief, Exhibits A and I. However, he did not offer a basis
9 of relief for any of the penalties.

10 Appellant knew the filing requirement and had previously
11 filed timely, however, even based on Appellant's statements
12 today, his failure to file and make timely payments did not
13 occur notwithstanding the exercise of ordinary care or the
14 absence of willful neglect. In fact, Appellant stated that
15 he'd ignored Appellant's request and notices at the appeals
16 conference, Exhibit A, Pages 7 and 12, and Exhibit H, thus no
17 penalty relief is warranted.

18 The imposition of interest is mandatory, and the law
19 provides for relief of interest in narrow circumstances, see
20 RTC Section 6482. As relevant in this case, a taxpayer may be
21 entitled to interest relief when failure to pay tax was due in
22 whole or in part to an unreasonable error or delay by a
23 department employee acting in their official capacity, RTC
24 Section 6593.5(a)(1).

25 An error or delay will be deemed to have occurred only if

1 no significant aspect of the error or delay is attributable to
2 an act of or a failure to act by the taxpayer, Section 6593.5,
3 Subdivision B.

4 Appellant has filed the necessary statement, signed under
5 penalty of perjury, to support his request for interest
6 relief, Exhibit A, Page 18, and Exhibit I. Appellant contends
7 that interest relief is warranted because the Department erred
8 in failing to pay the renewal fee on his liquor license, and
9 subsequently seizing -- and then subsequently seizing and
10 selling it to satisfy his unpaid tax liabilities, however,
11 there is no legal requirement the Department seize or sell a
12 liquor license to satisfy a delinquent tax debt. Again, CPPC
13 Section 24049.5(a) which states that the Board may sell and
14 seize the license.

15 Thus, there was no error by the Department. Appellant
16 was sent statements of account, Exhibit D, advising that
17 interest was continuing to accrue on the liability, but he did
18 not make any payments, thus no interest relief is warranted.
19 For these reasons we request the appeal be denied. Thank you.

20 JUDGE ALDRICH: Thank you. At this point I'm going
21 to open it up for questions to the panel. Judge Long?

22 JUDGE LONG: No questions at this time. Thank you.

23 JUDGE ALDRICH: Hearing Officer Wilson?

24 HEARING OFFICER WILSON: No questions.

25 MR. POLLAK: I have a question?

1 JUDGE ALDRICH: Okay.

2 MR. POLLAK: If possible?

3 JUDGE ALDRICH: Sure. You can direct it to me.

4 MR. POLLAK: Okay. She stated that I told them --
5 told them -- Where is it? She also forgot to mention that --

6 JUDGE ALDRICH: One second, you said she stated
7 something incorrect?

8 MR. POLLAK: Yeah.

9 JUDGE ALDRICH: Why don't you --

10 MR. POLLAK: -- Yeah. Let me find the files.

11 JUDGE ALDRICH: So, Mr. Pollak, you had submitted via
12 fax a copy of the decision, and there was something circled on
13 it. Was that to indicate you didn't agree with it?

14 MR. POLLAK: Yeah.

15 JUDGE ALDRICH: Okay.

16 MR. POLLAK: I didn't agree with what Potter said in
17 that hearing when it came to me receiving these things that I
18 knew. I told him I have no clue. That if I received some of
19 these forms from the State Board of Equalization. They might
20 have been sent. I don't know. What address did they send
21 them to?

22 JUDGE ALDRICH: So you don't know whether or not --

23 MR. POLLAK: -- I'm not sure. I'm not sure. I
24 didn't -- Yeah. I'm not sure what they sent. I had four
25 kids. I had a brother living at the house. People get mail.

1 I'm working 60, 70 hours a week to support my kids. I never
2 opened up anything to know what State Board sent, but I would
3 have asked them, what address were they sending them to?

4 JUDGE ALDRICH: So you just indicated that you didn't
5 open mail from the State Board of Equalization?

6 MR. POLLAK: I'm saying I'm -- I was -- After 30
7 years, I wasn't sure if they sent it, what they sent.

8 JUDGE ALDRICH: I see.

9 MR. POLLAK: Yeah. But I would like to know what
10 address they were sending it to.

11 JUDGE ALDRICH: Okay. CDTFA, would you care to
12 respond to that?

13 MS. JACOBS: So Exhibit D has copies of the
14 statements of account that we sent, and it looks like the
15 statements of account were all sent to 748 Cessna,
16 C-E-S-S-N-A, Avenue, Chico --

17 JUDGE ALDRICH: -- Are you familiar with that?

18 MR. POLLAK: That was my address.

19 JUDGE ALDRICH: Okay.

20 MR. POLLAK: I also want to mention that when the
21 State Board talked to ABC in March, they were told the liquor
22 license was worth 25 to \$30,000, which in -- was in one of
23 their forms on the --

24 JUDGE ALDRICH: -- Ms. Jacobs, you're shaking --
25 Sorry. Mr. Pollak --

1 MR. POLLAK: -- That's all.

2 THE COURT: I'm going to need to ask you to not
3 interject. Ms. Jacobs, you were shaking your head yes in
4 response to Appellant's statement that the -- regarding the
5 value of the ABC License; is that correct or no?

6 MS. JACOBS: Sorry. That's correct. It -- When the
7 BOE called ABC, we had record in Exhibit H that they said this
8 type of license is going for 25 to \$30,000.

9 JUDGE ALDRICH: Okay. So it doesn't appear that
10 that's in dispute?

11 MR. POLLAK: But she didn't mention it.

12 JUDGE ALDRICH: Okay. That's fine.

13 MR. POLLAK: Also --

14 JUDGE ALDRICH: Excuse me. At this time I'm going to
15 give you the opportunity, 5 to 10 minutes to make a closing
16 statement, so if there are things like this that you want to
17 bring up, you have the time to do it, or if there are things
18 that you don't agree with, that's fine. You can let us know
19 about them, okay?

20 MR. POLLAK: Mm-hmm. I don't know which -- which
21 exhibit that I put up here with the -- with the dates on here
22 mentioning status, 24, August, 1995. Term, 12 months. Did
23 you know that?

24 JUDGE ALDRICH: Hold on. First, don't ask questions
25 of them.

1 MR. POLLAK: Okay.

2 JUDGE ALDRICH: You can direct questions to me, and
3 it looks like that document is an attachment to the decision.
4 Could you tell me what the top of that document says that
5 you're referencing?

6 MR. POLLAK: Alcohol and Beverage Control.

7 JUDGE ALDRICH: Okay. And the report date? Is that
8 February 2nd?

9 MR. POLLAK: February 2nd, '23.

10 JUDGE ALDRICH: Thank you. Okay. I just need to
11 make sure that everybody is on the same page, and we're
12 referencing the same things, okay?

13 MR. POLLAK: Right.

14 JUDGE ALDRICH: All right. Now, what did you want to
15 state?

16 CLOSING STATEMENT

17 MR. POLLAK: I just wanted to state that between the
18 State Board of Equalization, and ABC, they had \$50,000 worth
19 of liquor license that was taken away from me that they had
20 right and opportunity, and knew about it, that they could get
21 it and sell it, because other people have told me they've done
22 it before.

23 I didn't know. This is what -- This is just what was
24 told to me, and a person that knows about one license that I
25 knew up in a meeting, and knew about the second license, that

1 was going on for probably over three years, they could have
2 got that license too, because I got a letter saying they were
3 gonna revoke it on a certain date. The same letter from ABC
4 should have been sent to the State Board of Equalization, and
5 they could have had the license right there, or if there was a
6 question, they could have called me on the phone before the
7 license went back on both deals.

8 Both deals the State Board knew about the licensing, and
9 the dates. I'm the only one that didn't know about the first
10 one that they revoked in May -- March when I opened up for 12
11 months in August.

12 They were in contact with ABC, not me. They could have
13 called me and said, "Hey, you gotta hurry up," and I would
14 have said, "If I can't sell it, I'll turn it over to you." I
15 have no problem, but all I know is the State of California
16 ended up with these licenses, and I end up paying penalties
17 and interest on something that they had the right opportunity
18 and due diligence to request to sell them.

19 I'm a businessman, and if someone told me that, and if I
20 was working for someone and I didn't do that, and I couldn't
21 get the money back for that person, they'd fire me. That's
22 all I have to say.

23 JUDGE ALDRICH: Thank you, Mr. Pollak. And so I
24 indicated at the beginning of the hearing that I was
25 entertaining the possibility of you submitting questions to

1 CDTFA. Is that still something that you'd be interested in,
2 Mr. Pollak?

3 MR. POLLAK: I'm not submitting questions to them. I
4 want them in person.

5 JUDGE ALDRICH: Okay. Well --

6 MR. POLLAK: -- I want to depose them.

7 JUDGE ALDRICH: That subpoena request was denied. It
8 sounds like you're not interested in questions --

9 MR. POLLAK: -- I know. I'm not gonna go through any
10 more of the process. I'm tired of dealing with it. I
11 requested things. I waited six years for this, and everything
12 -- and there should be no reason these employees of the State
13 can't come in, and these people won't bring them here to know
14 the truth. About their employees. That's all I have to say.

15 JUDGE ALDRICH: Thank you, Mr. Pollak.

16 MR. POLLAK: Okay.

17 JUDGE ALDRICH: All right. Well, we're going to
18 conclude the hearing. The case is submitted today, August
19 20th, 2024. We will render our decision within a hundred days
20 and provide that to the parties. Thank you.

21 MR. POLLAK: Okay.

22 MR. HUXSOLL: Thank you.

23 MS. JACOBS: Thank you.

24 (Whereupon the proceedings were concluded.)

25 ---oo0oo---

1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified
4 Shorthand Reporter of the State of California, do
5 hereby certify:


6 That the foregoing proceedings were taken before
7 me at the time and place herein set forth; that any
8 witnesses in the foregoing proceedings, prior to
9 testifying, were duly sworn; that a record of the
10 proceedings was made by me using machine shorthand, which
11 was thereafter transcribed under my direction; that the
12 foregoing transcript is a true record of the testimony
13 given.

14 Further, that if the foregoing pertains to the
15 original transcript of a deposition in a federal case,
16 before completion of the proceedings, review of the
17 transcript was was not requested.

18 I further certify I am neither financially
19 interested in the action nor a relative or employee of any
20 attorney or party to this action.

21 IN WITNESS WHEREOF, I have this date subscribed
22 my name.

23 Dated: SEPTEMBER 11, 2024



24 Certified Shorthand Reporter
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